

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 36

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**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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<http://www.customs.gov>**

U.S. Customs Service

Treasury Decision

(T.D. 02-32)

BONDS

APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

XL Specialty Insurance Company

Authorized facsimile signature on file for:

Peter M. Quinn, Attorney-in-fact

Michelle E. Skonieczny, Attorney-in-fact

Christopher A. Borre, Attorney-in-fact

The corporate surety has provided the Customs Service with copies of the signatures to be used, copies of the corporate seal, and certified copies of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: June 17, 2002.

JEREMY BASKIN,

Acting Chief,

Entry Procedures and Carriers Branch.



U.S. Customs Service

General Notices

REOPENING OF APPLICATION PERIOD FOR PARTICIPATION IN A NATIONAL CUSTOMS AUTOMATION PROGRAM TEST: FIRST PHASE OF THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE) FOR THE ACE ACCOUNT PORTAL

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: A notice appeared in the Federal Register on May 1, 2002, announcing a 30 day application period for participation in the National Customs Automation Program test of the first phase of the Automated Commercial Environment (ACE) for the Account Portal. The testing of this ACE Account Portal is scheduled to commence no earlier than October 28, 2002 and will run for approximately two years. The test will allow participating importers and authorized parties to access their Customs data via a web-based Account Portal. The test is the first step toward the full electronic processing of commercial importations in the ACE with a focus on defining and establishing the importer's account structure. This document announces a reopening of the application period.

EFFECTIVE DATES: The test application period is reopened until August 1, 2002, for purposes of establishing the initial forty importers to participate in the test. Comments concerning this notice and all aspects of the announced test may be submitted at any time.

ADDRESSES: Written comments regarding this notice may be submitted to Ms. Hedwig Lock at U.S. Customs Service, 2850 Eisenhower Ave.—First Floor, Alexandria, Virginia 22314; e:mail address: eisenhower@customs.treas.gov; FAX number: (703) 329-5235. Applications to participate will only be accepted via e:mail sent to eisenhower@customs.treas.gov

FOR FURTHER INFORMATION CONTACT: Ms. Hedwig Lock, U.S. Customs Service, Office Of Field Operations, Trade Programs, Commercial Compliance, Account Management; Tel. (703) 317-3657; e:mail address: eisenhower@customs.treas.gov

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 1, 2002, Customs published a general notice in the Federal Register (67 FR 21800) announcing Customs plan to conduct a National

Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE) for the Account Portal. The testing of this ACE Account Portal is scheduled to commence no earlier than October 28, 2002 and will run for approximately two years. The test will allow participating importers and authorized parties to access their Customs data via a web-based Account Portal. The test is the first step toward the full electronic processing of commercial importations in the ACE with a focus on defining and establishing the importer's account structure. The Account Portal has the ability to access, manage, and disseminate information in an efficient and secure manner. Participants in this test will eventually have the opportunity to use the account management functions such as account access to their profile and transactional data via the web portal. Eventually the account owner will also have the option to delegate portal access. In the initial phase of the test program participants will only have access to static data and basic account profile information necessary to establish an account. In the later stages of the test, participants will have access to more extensive operational transaction data through the web portal.

In the notice announcing the test, Customs stated that it planned to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test and stated that to be considered as eligible as one of the initial participants, applications must be received by June 1, 2002. (A primary benefit for the initial participants will be an early opportunity to provide direct input into the initial design of the Account Portal.) Customs also stated that additional participants may be selected throughout the duration of this test.

Because of insufficient applications received by Customs within the initial 30-day time frame, Customs is extending the application period until August 1, 2002, for those desiring to be one of the initial participants. While applications for participation may be submitted to Customs at any time, any applications received after Customs has selected forty participants will be considered on a waiting list basis pending expansion of the technology.

Anyone interested in participating in the test should refer to the test notice published in the Federal Register on May 1, 2002, for eligibility and application information.

Dated: June 13, 2002.

BONNI G. TISCHLER,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, June 18, 2002 (67 FR 41572)]

IMPORTER SELF-ASSESSMENT PROGRAM

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of the implementation of the Importer Self-Assessment (ISA) program and describes the requirements for participation in, and benefits under, the ISA. The ISA, which was developed by Customs under its regulatory audit authority, allows interested importers to assess their own compliance with Customs laws and regulations. Participation in the ISA is open to all importers who are participating members in the Customs-Trade Partnership Against Terrorism.

DATE: Participation in the ISA will be open to all qualified importers beginning on June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Customs Internet website (<http://www.customs.gov/imp-exp1/comply/isa.htm>) or Russell Ugone, Director, Trade Agreements Branch, Regulatory Audit Division (202-927-0728).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As a consequence of the passage of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057), an important objective of Customs in the trade compliance process has been to maximize importer compliance with U.S. trade laws while, at the same time, facilitating the importation and entry of admissible merchandise. To meet this goal, Customs has made a comprehensive effort to review, improve, and redesign, on an ongoing basis, the trade compliance process using established business practices, reengineered tools, and new methodologies that improve customer service without compromising the enforcement aspect of the Customs mission.

In order to enable interested importers to participate in a program that would allow them to assess their own compliance with Customs laws and regulations on a continuing basis, Customs on April 24, 1998, published in the Federal Register (63 FR 20442) a notice of a plan to conduct a test regarding the Importer Compliance Monitoring Program (ICMP). On April 30, 2002, Customs published a notice in the Federal Register (67 FR 21322) advising the public of the termination of the ICMP test because importer participation in the ICMP remained below the level anticipated by Customs when the ICMP procedures were developed. That notice stated that the ICMP was being discontinued in favor of a new program. The new program, Importer Self-Assessment (ISA) will continue the self-assessment principles of the ICMP while relying on new methodologies which provide upfront benefits and a more flexible approach.

The purpose of this notice is to describe the operation of the ISA, including the requirements for participation in, and benefits under, the ISA program.

DESCRIPTION OF THE IMPORTER SELF-ASSESSMENT PROGRAM

Overview

The ISA program is a joint government-business initiative designed to build cooperative relationships that strengthen trade compliance. It is based on the premise that importers with strong internal controls achieve the highest level of compliance with Customs laws and regulations. The ISA program provides a means to recognize and support importers that have implemented such systems.

All importers who are current members of the Customs-Trade Partnership Against Terrorism (C-TPAT) may apply for ISA by signing an ISA Memorandum of Understanding (MOU) and completing an ISA questionnaire. Customs will then assess the applicant's readiness to assume the responsibilities of ISA. When signed by both parties, the MOU will establish a partnership between the importer and Customs and will provide further benefits as described below. ISA applications will be accepted beginning on June 17, 2002.

ISA Participation Requirements

In order to participate in the ISA program, an importer must:

1. Become a member with full benefits of the C-TPAT.
2. Be a resident importer in the United States with a minimum of two years importing experience.
3. Agree to comply with all applicable Customs laws and regulations.
4. Have and maintain a system of business records that demonstrates the accuracy of Customs transactions.
5. Complete an ISA questionnaire and sign an ISA MOU under which the importer agrees to:
 - a. Establish, document, and implement internal controls;
 - b. Perform periodic testing of the system based on risk;
 - c. Make appropriate adjustments to internal controls;
 - d. Inform Customs through appropriate disclosures of material errors identified through company reviews;
 - e. Maintain an audit trail from financial records to Customs declarations;
 - f. Maintain results of testing for five years and make test information available to Customs on request; and
 - g. Submit an annual written notification to Customs to confirm the identity of the company ISA contact, and confirm the importer continues to meet the requirements of the ISA program as specifically listed here and in the MOU.
6. Have the ability to connect to the Internet.

Application Process

1. Required Information

Each application for participation in the ISA program must include the following information and documentation:

- a. The importer's name;
- b. A unique importer number (for example, SSN, EIN, Customs Assigned Importer#, DUNS#);
- c. A statement certifying to the importer's participation in C-TPAT;
- d. A statement certifying to the importer's ability to connect to the Internet; and
- e. A signed ISA MOU and completed ISA questionnaire.

2. Customs Review of Application

After the importer has submitted an application, Customs will review the company submission. This review will include a risk assessment of the applicant and review of the application to determine the applicant's readiness to assume responsibilities for self-assessment. In some cases a Customs multi-disciplinary team may visit the applicant to consult with the company, to discuss and review the company's internal controls. This will not be an audit and will not involve extensive testing. The purpose of the consultation is to determine if the applicant is ready to assume the responsibilities of self-assessment and to provide Customs assistance and training as appropriate. If Customs determines that the company is not ready to assume the responsibilities of self-assessment, Customs will continue to work with the company to strengthen and improve their program. If Customs determines the applicant is ready to assume the responsibilities of self-assessment, Customs will sign the MOU.

Customs reserves the right, in its discretion, to approve or disapprove an application. Further, in selecting applicants for participation in ISA, Customs reserves the right to establish priorities for the processing and approval of applications based upon the volume and/or nature of each applicant's Customs transactions and other factors, including whether the applicant had a previous designation as a low-risk importer, whether the applicant made a prior application under the ICMP test, and whether the applicant was engaged in management processes involving a full-time Account Manager from Customs. First priority will be given to importers with low-risk designation.

ISA Potential Benefits

Once accepted into the ISA program, the importer becomes eligible for the following benefits:

1. The importer will be entitled to receive entry summary trade data, including analysis support, from Customs.
2. Consultation, guidance, and training by Customs will be available to the importer as requested and as resources permit (for compliance assistance, risk assessments, internal controls, Customs audit trails, etc.).

3. There will be an opportunity to apply for coverage of multiple business units.

4. The importer will be exempt from all comprehensive compliance audits (accounts may be subject to onsite examinations for specific reasons but will not be subject to comprehensive assessments of all Customs operations).

5. The importer will be able to use a hotline to Regulatory Audit Division key liaison officials.

6. With respect to an importer's right to make a prior disclosure pursuant to 19 U.S.C. 1592(c) or 1593a(c) and 19 CFR 162.74 when the importer becomes aware of facts that may represent a violation of 19 U.S.C. 1592 or 1593a, an ISA participant may utilize the following process: Unless, during Customs assistance, consultation or training with an ISA participant, Customs becomes aware of errors in which there is an indication of a fraudulent violation of 19 U.S.C. 1592 or 1593a, Customs will provide a written notice to the participant of such errors and allow 30 days from the date of the notification for the participant to assess and, if determined necessary, to file a prior disclosure pursuant to 19 CFR 162.74. This benefit does not apply if the matter is already the subject of an on-going Customs investigation.

7. In the event that civil penalties or liquidated damages are assessed against an importer, the importer's participation in ISA will be considered in the disposition of the case.

8. The importer will have access to a Customs team consisting of an Account Manager, an auditor and a trade analyst assigned to service ISA participants;

9. Additional benefits may be made available, tailored to industry needs (by mutual agreement).

ISA Continuing Participation Requirements

ISA participants must remain in compliance with the requirements of the ISA MOU, which include the annual notification to Customs. In connection with this notification, Customs will determine if additional discussions or reviews of company controls or documentation are necessary. In addition, ISA participants are responsible for making appropriate ongoing changes to internal controls as needed.

As indicated above, ISA participants as a general rule will not be subjected to any routine or periodic on-site reviews or audits, other than consultations with Customs account managers and auditors for training, support and compliance improvement purposes. However, a participant may be subject to an audit or on-site review of a specific issue related to an identified trade compliance risk. In such instances, Customs and the participant will work together to determine a mutually acceptable course of action wherever possible.

If a participant fails to follow the terms of the MOU, fails to exercise reasonable care in the execution of participant obligations under the program or fails to abide by applicable laws and regulations, the participant may be subject to removal from the ISA program. If Customs believes that there is a basis for proposing the removal of a participant

from the ISA program, a written notice of proposed removal will be provided to the participant and will apprise the participant of the facts or conduct warranting removal. The participant may respond to the proposed removal by writing to the Director, Regulatory Audit Division, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, within 15 days of the date of the notice of proposed removal. The participant's response should address the facts or conduct charges contained in the notice and should state how compliance will be achieved. A final written decision on the proposed removal will be issued to the participant by Customs after the 15-day response period has closed. However, in the case of willfulness or where public health interests or safety are concerned, a removal from the ISA program may be effective immediately as a final action and without opportunity for written response.

Detailed information concerning the ISA program is maintained at the Customs Internet website (<http://www.customs.gov/imp-expl/comply/isa.htm>). The ISA Handbook available at that website contains general information and forms needed to apply for the program and specific information and details about program requirements and benefits.

Dated: June 13, 2002.

DOUGLAS M. BROWNING,
Deputy Commissioner of Customs.

[Published in the Federal Register, June 17, 2002 (67 FR 41298)]



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach

Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

(Slip Op. 02-55)

BECKER GLOVE INTERNATIONAL, INC., PLAINTIFF v.
UNITED STATES, DEFENDANT

Court No. 02-00278

[The subject merchandise is properly classified under HTSUS 6117.80.85.]

(Dated June 18, 2002)

Neville Peterson LLP (John M. Peterson and Curtis Knauss) for plaintiff Becker Glove International, Inc.

Robert D. McCallum, Jr., Assistant Attorney General, *John J. Mahon*, Acting Attorney in Charge, *Harry A. Valetz*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice for defendant.

OPINION

GOLDBERG, Senior Judge: This case involves the proper classification of knit polyester fleece headbands imported from the People's Republic of China. Plaintiff Becker Glove International, Inc. ("Becker Glove") imported the subject merchandise under subheading 6117.80.85 of the Harmonized Tariff Schedule of the United States (2002) ("HTSUS"). The United States Customs Service ("Customs") asserts that the proper classification of the subject merchandise is HTSUS 6117.80.9540. Although the tariff rate is the same under either subheading, under Customs' proposed classification the merchandise would be subject to quota restrictions and Becker Glove would be forced to obtain a textile quota category 659-O visa in order to enter the headbands into the United States.

The parties filed a Stipulation with this Court, dated June 4, 2002, wherein they agreed that the sole issue presented in this case is whether Customs properly classified the subject merchandise under HTSUS 6117.80.9540. Because the parties have agreed to submit this action for decision based on the Stipulation alone, rather than submitting additional briefs or proceeding to trial, the Court treats the Stipulation as cross-motions for summary judgment under U.S.C.I.T. R. 56.

BACKGROUND

The knit polyester fleece headbands, SKU nos. 84678-00765, 84678-00766, 84678-00767, 84678-00768, and 84678-00770 (collectively "subject merchandise"), were imported as one entry at the port of St. Louis, Missouri, on February 5, 2002. Becker Glove classified the subject merchandise upon importation under HTSUS subheading 6117.80.85, "[h]eadbands, ponytail holders and similar articles." Customs released the merchandise to Becker Glove, but later issued Becker Glove a Customs Form 4647 Notice to Redeliver the subject merchandise, indicating that the proper classification of the subject merchandise was HTSUS 6117.80.9540, the residual "other" category, and that it was therefore subject to visa requirements. Becker Glove filed a protest on February 28, 2002. The Port Director of Customs for the Port of St. Louis, Missouri, denied Becker Glove's protest on March 20, 2002. Becker Glove timely commenced this action in the Court of International Trade on April 8, 2002, to challenge the denial of its protest.

DISCUSSION

The Court has jurisdiction pursuant to 28 U.S.C. § 1581(a) (2000). The question of proper classification in this case is a question of law, over which the Court exercises *de novo* review. See 28 U.S.C. § 2640 (2000). Under the Supreme Court's recent decision in *Mead Corp. v. United States*, 533 U.S. 218, 234-35 (2001), the Court affords deference to Customs' classification according to its "its writer's thoroughness, logic, and expertness, its fit with prior interpretations, and any other sources of weight." *Rockenel Fastener, Inc. v. United States*, 267 F.3d 1354, 1357 (Fed. Cir. 2001) (quoting *Mead*, 533 U.S. at 235).

Four previous New York Customs rulings, Nos. B85343, C87769, F81830, and G89526, were submitted to the Court. All describe similar headbands to those at issue in this case, and in each instance Customs classified the headbands under HTSUS 6117.80.9540, noting that the function of the headbands was to provide warmth.

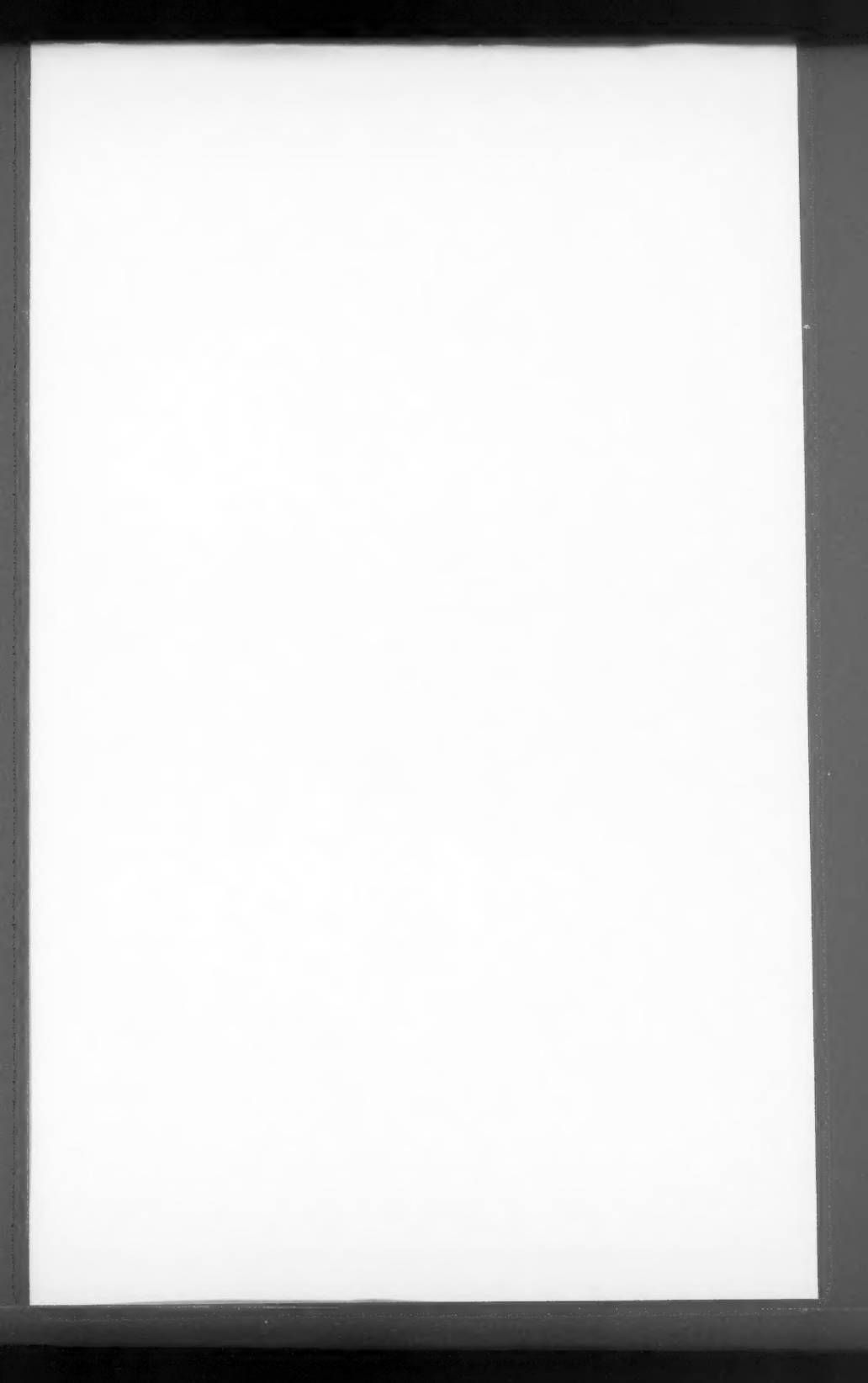
After reviewing the HTSUS, the Stipulation, and submitted exhibits, the Court finds that the subject merchandise is properly classified under HTSUS 6117.80.85, as "[h]eadbands, ponytail holders and similar articles." The parties agree that the subject merchandise falls under heading 6117, HTSUS, "[o]ther made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories." However, Customs contends that the subject merchandise must be classified under the residual "[o]ther" category, HTSUS heading 6117.80.9540, because the subject merchandise is intended to provide warmth.

Subheading 6117.80.85 encompasses the *eo nomine* designation of "headbands," but that term is not defined in the HTSUS or the legislative history. See *Pillowtex Corp. v. United States*, 171 F.3d 1370, 1373 (Fed. Cir. 1999). Therefore, the Court will construe the term "headbands" according to its common and popular meaning. *Id.* The Court may rely on its own understanding, dictionaries, and other reliable

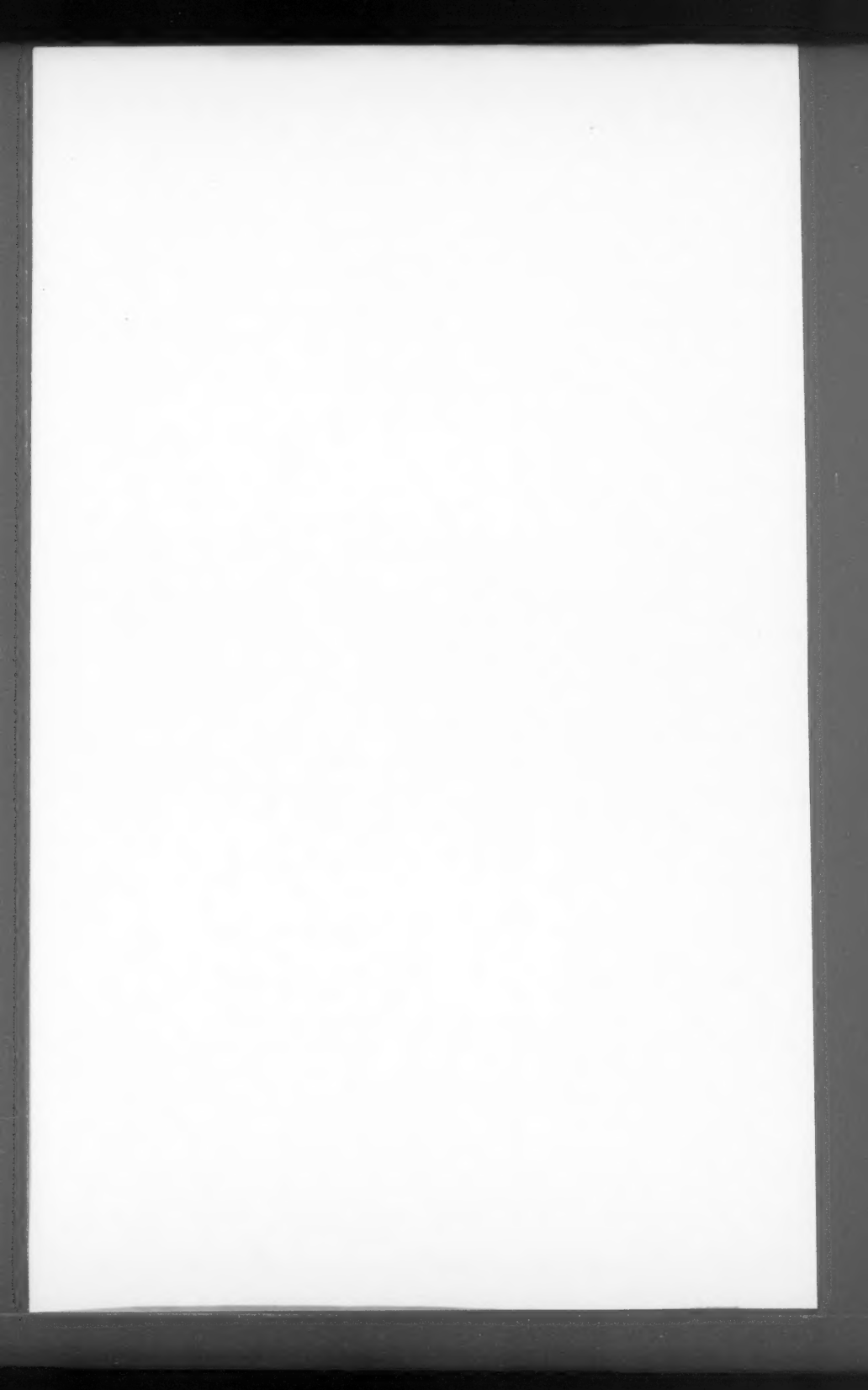
sources to ascertain the common meaning of the term. See *Brookside Veneers v. United States*, 6 Fed. Cir. (T) 121, 125, 847 F.2d 786, 789 (1988). The Court understands the term "headband" to include the subject merchandise. Also, the parties stipulate that the subject merchandise "is known commonly and commercially as 'headbands,'" Stipulation at 3, so that headbands with the purpose of providing warmth are within the common meaning of "headbands." See Stipulation at 3. "[A]n *eo nomine* designation, with no terms of limitation, will ordinarily include all forms of the named article." *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) (quoting *Hayes-Sammons Chem. Co. v. United States*, 55 C.C.P.A. 69, 75 (1968)). Therefore, the Court finds that the term "headband" in HTSUS 6117.80.85 does not exclude headbands designed to provide warmth.

Because the *eo nomine* provision of HTSUS 6117.80.85 includes "headbands," and the subject merchandise is commonly and commercially known as headbands, the proper classification of the subject merchandise is HTSUS 6117.80.85. Judgment must therefore be entered in plaintiff's favor.











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